IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9162 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHANDRAKANT ALIAS CHARKHI SANKARBHAI SENDKAR

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 9162 of 2003

MR SATISH R PATEL for Petitioner No. 1

MS MITA PANCHAL Ld. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 27/08/2003

ORAL JUDGEMENT

By this special civil application, the petitioner has challenged the order of Police Commissioner, Baroda City passed on 12.1.2003 agains the petitioner for his

detention under the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act" for short).

From the grounds served upon the petitioner and placed on record indicate that four offences were registered against the petitioner under sec. 66(1)(B), 65E and 81 of the Bombay Prohibition Act. It has also been alleged that two witnesses naratted the incidents of 20.12.2002 and 26.12.2002, wherein the petitioner forced the witnesses to cooperate with him in the business of selling of illegal liquor. It is also alleged that the witnesses were threatened and with knife in hand the petitioner ran after the crowd gathered at the time of incident. Though these incidents are not reported to the police, the statements of the witnesses appears to have been recorded on 10.1.2003 and verified by the detaining authority on 11.1.2003 by keeping the names of the witnesses in concealment as per sec. 9(2) of the PASA Act.

Ld. advocate Mr. SR Patel for the petitioner and Ld. AGP Ms. Panchal for respondents, were heard. Ld. AGP Ms. Panchal has placed on record the affidavit in reply filed by the then detaining authority.

Ld. advocate for the petitioner raised various grounds on various contentions. From rival contentions, it appears that this petition can be disposed of on the sole ground whether the detaining autority applied its mind while passing the order. Undoubtedly, when order came to be passed for detention, the petitioner was in judicial custody in a crime registered against him. In this respect, the detaining authority reached to the subjective satisfaction that the petitioner was likely to be released on bail and was likely to continue his anti social activities. Ld. AGP has drawn my attention to a decision of the Apex Court in the matter of Abdul Sathar Ibrahim Manik v. Union of India and others, as reported in AIR 1991 SC 2261 and para-12 of the affidavit in reply filed by the detaining authority. The contention is that there were every possibility according to the detaining authority that the detenu making an application for bail and if he is released on bail, he was likely to continue his anti social activities. Having regard to the facts of this case, it clearly appears that the facts of the present case are more squarely covered by a decision of the Apex Court in the matter of Amritlal and other vs. Union Government through Secretary, Ministry of Finance and others as reported in AIR 2000 SC 3675, wherein the Apex Court laid down that likelihood of moving an

application and likelihood to be released on bail are different propositions. The detaining authority to reach to subjective satisfaction that the detenu was likley to be released on bail must rely upon cogent material while in Abdul Sathar Ibrahim Manik vs. Union of India and others (supra), the detaining authority has relied upon such material, but in this case, as contended on behalf of the petitioner, even no bail application has been moved and admittedly there was no material relied upon as cogent material to reach to a subjective satisfaction that the petitioner was likely to be released on bail. Therefore, in this view of the matter, in this case, the detaining authority has not applied its mind properly to the vital important aspect and the facts before reaching to the subjective satisfaction as required under the law. The order impugned, therefore, deserves to be quashed and set aside.

In the result, this special civil application is allowed. The order passed by the Police Commissioner, Baroda City on 12.1.2003 against the petitioner under the PASA Act is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs.

(J.R. VORA, J.)

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